DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0161
Controlled Substance Excise Tax
For Tax Period October 13, 1992

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ISSUE

I. Controlled Substance Excise Tax—Imposition

Authority: Bryant v. State 660 N.E.2d 290 (Ind. 1995); IC § 6-7-3-5; IC § 6-7-3-6; IC § 6-8.1-5-1

Taxpayer protests the assessment of the Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of Cocaine and Marijuana. The Indiana Department of Revenue issued an assessment of the Controlled Substance Excise Tax (CSET) on October 13, 1992. An administrative hearing was held on October 27, 1999. Taxpayer failed to attend the hearing. This Letter of Findings is written based on the best information available to the Department. Additional facts will be presented as necessary.

I. Controlled Substance Excise Tax—Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

> The controlled substance excise tax is imposed on controlled substances that are:
>
> (1) delivered,
> (2) possessed, or
> (3) manufactured;
>
> in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance is determined by:
(1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 494.0 grams of marijuana and 101.7 grams of cocaine.

Pursuant to Indiana Code Section 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer's protest letter stated that the taxpayer believed the assessment of the controlled substance excise tax was "Double Jeopardy" and was barred since he had served a prison sentence in connection with his arrest for possession of the controlled substances. There is a wealth of case law on this point (*See* Bryant v. Indiana Dept. of State Revenue, 660 N.E.2d 290 (Ind. 1995); Clifft v. Indiana Dept. of Revenue, 660 N.E.2d 310 (Ind. 1995)), and it is not necessary to recapitulate the cases. The Indiana Supreme Court has held that the CSET assessment is considered a jeopardy under Constitutional analysis when the assessment is served on the taxpayer. Conversely, the criminal jeopardy attaches when either a jury has been impaneled and sworn, or when a plea agreement has been entered into and approved by the judge. Under "double jeopardy" analysis, the first jeopardy to attach precludes the second one from attaching—though the courts may be changing their position on this when it comes to civil and criminal matters (*See* Hudson v. United States, 118 S. Ct. 488 (1997)) (holding that the double jeopardy clause protects only against the imposition of multiple criminal punishments for the same offense and then only when such occurs in successive proceedings).

The Department of Revenue mailed notices of the scheduled administrative hearing to taxpayer's last known address, but all were returned as address unknown. Taxpayer did not attend the administrative hearing, and so did not offer any evidence that the assessment was invalid. As such, and since the assessment is not barred as Double Jeopardy, the taxpayer failed to meet the burden imposed by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

WBL/BK/JMS-990311